

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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In the Matter of

Petition of Bell Atlantic  
for Forbearance from  
Section 272 Requirements in Connection with  
National Directory Assistance Services

Excell Application For Review

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 97-172  
DA 00-631

To: The Commission

**OPPOSITION TO SBC COMMUNICATIONS INC.'S COMMENTS  
RELATED TO EXCELL'S APPLICATION FOR REVIEW**

Excell Agent Services, L.L.C. ("Excell"), by its attorneys, hereby submits its Opposition to SBC Communications Inc.'s Comments Related to Excell's Application for Review in the above-captioned matter.<sup>1</sup> The decision adopted by the Common Carrier Bureau ("Bureau") in this matter should be reversed and SBC fails to present any valid reasons to the contrary.<sup>2</sup> The more fully developed record in this proceeding demonstrates the need for the Commission to

<sup>1</sup> See Comments of SBC Communications Inc. Related to Application for Review in CC Dkt. No 97-172 (Apr. 3, 2000) ("SBC Comments"). The Common Carrier Bureau decided to forbear from applying the Section 272 separate affiliate requirements to Bell Atlantic's provision of non-local directory assistance. See Petition of Bell Atlantic for Forbearance From Section 272 Requirements in Connection With National Directory Assistance Services, *Memorandum Opinion and Order*, CC Docket. No. 97-172 (Dec. 22, 1999) ("Bell Atlantic Order").

<sup>2</sup> Excell acknowledges that the Bureau released an order on April 11, 2000 granting the same forbearance to BellSouth, SBC and Bell Atlantic-South. Excell will address this order in a separate pleading or another appropriate context.

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evaluate and revise the Bureau's decision to apply certain nondiscrimination safeguards to Bell Atlantic and US WEST in lieu of the requirement in Section 272 of the Communications Act to provide interLATA telecommunications services through a separate affiliate.<sup>3</sup> SBC claims in its Comments that Excell's Application for Review "ignored" the question of whether allowing Bell Atlantic to provide national directory assistance on an integrated basis, rather than through a separate subsidiary, met the conditions of forbearance.<sup>4</sup> Contrary to SBC's efforts to obfuscate and mischaracterize Excell's Application for Review, Excell has clearly addressed the three-prong test for forbearance in its Application for Review.<sup>5</sup> In fact, the entire Application was dedicated to the issue of whether or not it was proper for the Bureau to find that the statutory forbearance criteria were met.

The record in this proceeding demonstrates that the Commission's nondiscrimination safeguards are an inadequate replacement for the separate subsidiary requirements of section 272. These safeguards do not ensure that the "charges, practices, classifications, or regulations by, for or in connection" with the BOCs' provision of directory assistance are just and reasonable and not unjustly or unreasonably discriminatory, and thus fail to satisfy the first prong of the

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<sup>3</sup> See Bell Atlantic Order, ¶ 15; see also Petition of US WEST Communications for a Declaratory Ruling Regarding The Provision of National Directory Assistance, Petition of US WEST Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, *Memorandum Opinion and Order*, 14 FCC Rcd 16252 (1999) ("US WEST Order").

<sup>4</sup> See SBC Comments at 2.

<sup>5</sup> See Application for Review filed by Excell Agent Services in CC Dkt. No. 97-172 at 3-9 (filed Jan. 21, 2000) ("Application").

forbearance criteria.<sup>6</sup> All three prongs must be met. As Excell and others in this proceeding have demonstrated, the imposition of the nondiscrimination safeguards, even the requirement for a BOC to make directory listing information available “at the same rates, terms, and conditions it imputes to itself,”<sup>7</sup> have not curbed the BOCs’ insistence on charging inflated rates for directory assistance to outside parties. Instead, Bell Atlantic and the other BOCs have manipulated the nondiscrimination safeguards in such a way as to give the appearance that they are in compliance while, in practice, they are providing directory assistance to unaffiliated entities in a discriminatory fashion.

For instance, as InfoNXX alluded to in its Comments in Support of Excell’s Application for Review, Bell Atlantic established the excessive rates it desires to charge to independent directory assistance providers for directory listings and then imputes those rates to itself.<sup>8</sup> The imputation condition actually requires the opposite: Bell Atlantic must make directory listing information available at the same rates, terms, and conditions it imputes to itself.<sup>9</sup> The requirement is worded in way that assumes that Bell Atlantic is already imputing some rate to itself and then makes that rate available to unaffiliated entities. If this were so, one would logically conclude that there would be a difference in the rates that Bell Atlantic charged for

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<sup>6</sup> 47 U.S.C. § 160(a).

<sup>7</sup> See Bell Atlantic Order, ¶ 15.

<sup>8</sup> See Comments of InfoNXX in Support of Excell’s Application for Review in CC Dkt. No. 97-172 at 5 (filed Apr. 3, 2000) (“InfoNXX Comments”).

<sup>9</sup> See Bell Atlantic Order, ¶ 15.

directory assistance before and after the issuance of the Bell Atlantic Order,<sup>10</sup> but the excessive rates have not changed -- they were not affected by the mandates of the Bell Atlantic Order at all. Thus, it is apparent that Bell Atlantic took the rate it currently charges to independent directory assistance providers and imputed that rate to itself. The BOCs manipulative actions have rendered meaningless the Commission's safeguards supposedly designed to retain the section 272(c)(1) nondiscrimination requirements.

For these reasons, forbearance was not appropriate. Bell Atlantic should be required to provide non-local directory assistance through a separate affiliate under section 272(a).<sup>11</sup> The section 272 requirement is necessary to ensure that the BOCs' charges for directory listings are just and reasonable. As InfoNXX states in its comments, "when a Bell company uses an actual section 272 affiliate, presumably it first determines the costs that it is going to charge the affiliate before applying those charges to other entities."<sup>12</sup> Requiring the BOCs to create a real affiliate to provision its non-local directory assistance services, as opposed to a fictional one, is the only way to ensure that the BOCs' "imputed" rates are reasonable. If the Commission will not reinstate the separate affiliate requirement, it should at a minimum, as InfoNXX recommends, suggest a presumptively reasonable rate using the rates charged for directory listing information to competitive local exchange providers ("CLECs") as a model.

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<sup>10</sup> The same could be assumed for US WEST after the release of the US WEST Order which was issued on September 27, 1999.

<sup>11</sup> 47 U.S.C. § 272(a).

<sup>12</sup> See InfoNXX Comments at 4.

Bell Atlantic provides non-local directory assistance service as a package with its in-region directory assistance services so that it can provide a total "National 411" service. This package is what independent directory assistance providers compete with. They do not compete on two separate levels with a BOC's non-local directory assistance service and in-region directory assistance service. Although Bell Atlantic is a relatively new entrant to the non-local directory assistance market, it is well ingrained in the in-region directory assistance services market. So much so that the FCC has recognized its dominance in this market and the competitive advantages derived from such dominance.<sup>13</sup>

Bell Atlantic's ability to engage in unlawful discrimination in the provision of in-region directory listings against rival directory assistance providers gives it a competitive advantage in the provision of a National 411--a package of in-region and out-of-region directory assistance services. The nondiscrimination safeguards instituted in this proceeding have, in practice, fostered anticompetitive behavior by helping Bell Atlantic to obscure its discriminatory treatment of independent directory assistance providers. Ultimately, this anticompetitive behavior harms consumers by impeding the ability of independent DA providers to compete with National 411 offerings by the BOCs. Thus, the Commission should require Bell Atlantic to form a separate affiliate for the provision of its nonlocal directory assistance, a service that is now systematically intertwined with Bell Atlantic's monopoly provision of in-region directory assistance.

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<sup>13</sup> See Bell Atlantic Order, ¶ 15, n.42.

Section 272, on its face, delineates the services for which a separate affiliate is required.<sup>14</sup> It also exempts most of the list of incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g) from the separate affiliate requirements. Interestingly, the only incidental interLATA service that is not exempted by the statute is the incidental interLATA service described in section 271(g)(4): the BOC (or BOC affiliate) provision “of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA.”<sup>15</sup> In the Bell Atlantic Order, the Bureau found that Bell Atlantic’s provision of nonlocal directory assistance falls within the scope of section 271(g)(4), the one incidental interLATA service that Congress chose to continue to require the BOCs to offer only through a separate affiliate.<sup>16</sup> Thus, the only reason that Bell Atlantic does not have to provide this service through a separate affiliate is because the Bureau has chosen to forbear from applying this requirement under section 10 of the Act. While the Commission (in this case, the Bureau, on delegated authority) is required to forbear in certain specific instances, the statutory requirements in section 272 and the new evidence on the record all point to the conclusion, based on actual market behavior reflected in the record in detail, that it was inappropriate for the Bureau to forbear in this instance.

Congress has expressly required the Commission to “ensure that the provision of services authorized under subsection (g) [of section 271] by a Bell operating company or its affiliate will

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<sup>14</sup> See 47 U.S.C. § 272 (a)(2).

<sup>15</sup> 47 U.S.C. § 271(g)(4).

<sup>16</sup> See Bell Atlantic Order, ¶¶ 10-12.

not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.”<sup>17</sup> However, the non-discrimination safeguards actually aid and promote anti-competitive behavior on the part of the BOCs in their provision of directory listings. The nondiscrimination safeguards fall exceedingly short of what is called for by the statute: that incidental interLATA services be provided through a separate affiliate and that transactions between a BOC and its subsidiary be on an arm's length basis.<sup>18</sup> To carry out its section 271(h) mandate, the Commission must require the BOCs to provide non-local directory assistance through separate affiliates as the statute explicitly mandates.

SBC claims that in its original comments Excell had “urged” the FCC to grant Bell Atlantic’s petition.<sup>19</sup> In fact, Excell “urged” the FCC to recognize that Bell Atlantic can manipulate the non-discrimination requirements established in the US WEST Order to charge anti-competitive rates for DA data to unaffiliated entities.<sup>20</sup> Excell did state that the Bell Atlantic (North) petition should be granted as long as Bell Atlantic is not be permitted to discriminate against unaffiliated entities in its provision of directory assistance listings.<sup>21</sup> However, Excell filed the November 12th Comments before it had the opportunity to review Bell Atlantic’s Cost

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<sup>17</sup> 47 U.S.C. § 271(h).

<sup>18</sup> See Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong, 2d Sess 151-152 (1996).

<sup>19</sup> See SBC Comments at 3.

<sup>20</sup> See Comments of Excell Agent Services, L.L.C. at 2-3 (filed November 12, 1999) (“November 12<sup>th</sup> Comments”).

<sup>21</sup> *Id.* at 7, 9.

Allocation Manual (“CAM”) revisions which were supposedly meant to demonstrate the imputation of its directory assistance costs.<sup>22</sup>

The CAM revisions provide concrete proof that the nondiscrimination safeguards established in the US WEST Order and in the Bell Atlantic Order do not serve as an adequate means to “ensure that the competitive advantages [the BOCs] enjoy with respect to the provision of directory assistance service throughout [their] region will not undermine competition in the market for nonlocal directory assistance service.”<sup>23</sup> This was the FCC’s purpose in implementing the nondiscrimination safeguards.<sup>24</sup> As Excell demonstrated in its comments responding to Bell Atlantic’s CAM revisions, the CAM revisions provide no support for Bell Atlantic’s claim that reasonable rate imputation has actually taken place.<sup>25</sup> Excell agrees with InfoNXX that the lump sum categories submitted by Bell Atlantic in the revisions were overbroad and do not serve as a check on Bell Atlantic’s monopoly in-region power.<sup>26</sup>

For the reasons set forth herein, Excell urges the FCC to grant Excell’s Application for Review. It was not appropriate for the Bureau to grant Bell Atlantic forbearance of the section 272 separate affiliate requirements in this proceeding. The nondiscrimination safeguards meant

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<sup>22</sup> Bell Atlantic Telephone Companies File Revisions to its Cost Allocation Manual, Public Notice, ASD File No. 99-46, DA 99-2465 (Nov. 5, 1999) (“CAM Revisions”). Excell was not able to obtain Bell Atlantic’s CAM revisions prior to filing its November 12<sup>th</sup> Comments.

<sup>23</sup> See US WEST Order, ¶ 36.

<sup>24</sup> *Id.*

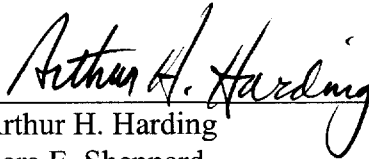
<sup>25</sup> See Comments of Excell in ASD File No. 99-46 (Bell Atlantic Telephone Companies File Revisions to its Cost Allocation Manual) at 7.

<sup>26</sup> See InfoNXX Comments, at 6.



to take the place of the statutory separate affiliate requirement actually aid Bell Atlantic in its campaign to discriminate against independent directory assistance providers in the provision of directory listings. Because the FCC is required to “ensure that the provision of services authorized under subsection (g) [of section 271] by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market,”<sup>27</sup> the FCC should either apply the section 272 separate affiliate requirements or revise the current nondiscrimination safeguards to include a presumptively reasonable rate to charge for in-region directory listings, based on charges imposed by Bell Atlantic for comparable services offered to CLECs.

Respectfully submitted,  
EXCELL AGENT SERVICES, L.L.C.

A handwritten signature in cursive script, reading "Arthur H. Harding", is written over a horizontal line.

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April 12, 2000

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<sup>27</sup> 47 U.S.C. § 271(h).

**CERTIFICATE OF SERVICE**

I, Tonya Y. VanField, hereby certify that a copy of the foregoing Opposition to SBC's Comments in CC Docket No. 97-172 was served this 12<sup>th</sup> day of April, 2000, via hand delivery, and first-class mail upon the following:

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